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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ELLIOTT CRANDLE,

Defendant and Appellant.

E074195

(Super.Ct.No. FSB06559)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Dismissed.

Johanna Pirko, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Elliot Crandle appeals from an order denying his petition for recall and resentencing under Penal Code section 1170, subdivision (d). Appointed appellate counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*); *Anders v. California* (1967) 386 U.S. 738 (*Anders*).) Because defendant is not entitled to *Wende/Anders* review from denial of the challenged postjudgment petition to recall his sentence and for resentencing, and neither he nor his counsel has raised any claim of error in its denial, we dismiss his appeal as abandoned.

II

PROCEDURAL BACKGROUND

On August 17, 1995, in a bifurcated proceeding, defendant admitted that he had suffered two prior robbery convictions which qualified as serious and/or violent felony strike convictions (Pen. Code, § 667, subd. (b)-(i)).¹

On August 25, 1995, a jury found defendant guilty of robbery (Pen. Code, § 211).

On October 11, 1995, the trial court denied defendant's motion for new trial and sentenced defendant to a total term of 26 years to life in state prison as follows: 25 years

¹ We grant appellate appointed counsel's March 26, 2020 request to take judicial notice of the clerk's transcript of the amended information and the reporter's transcript of the August 17, 1995 hearing where defendant admitted that he had suffered two prior strike convictions. (Evid. Code, §§ 452, 453, 459.)

to life for the robbery conviction pursuant to the Three Strikes law, plus a consecutive one year for a prior prison term conviction.

On May 21, 1997, this court affirmed the judgment and directed the trial court to vacate the one-year term pursuant to Penal Code section 667.5, subdivision (b), because defendant never admitted having suffered the prior prison term. (*People v. Crandle* (May 21, 1997, E017236) [nonpub. opn.].)

On October 9, 2019, defendant filed a petition for recall and resentencing pursuant to Penal Code section 1170, subdivision (d), requesting that the trial court consider resentencing him in light of his time served and retribution.

On October 17, 2019, the trial court summarily denied the petition.

On November 22, 2019, defendant filed a timely notice of appeal.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, setting forth a statement of the case, a summary of the procedural background and potential arguable issue,² and requesting this court to conduct an independent review of the record.

² Appointed appellate counsel notes the potential issue as whether the trial court erred in denying defendant's Penal Code section 1170, subdivision (d) petition for recall and resentencing, "but urges no specific contentions as grounds for relief."

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so. Thus, no claim of error has been raised.

Review pursuant to *Wende* or its federal constitutional counterpart *Anders*, *supra*, 386 U.S. 738 is required only in the first appeal of right from a criminal conviction. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 536-537 (*Ben C.*); *People v. Serrano* (2012) 211 Cal.App.4th 496, 500-501 (*Serrano*); *People v. Thurman* (2007) 157 Cal.App.4th 36, 45.)

The right to *Anders/Wende* review applies only at appellate proceedings where defendant has a previously established constitutional right to counsel. (*Serrano*, *supra*, 211 Cal.App.4th at p. 500; *Ben C.*, *supra*, 40 Cal.4th at pp. 536-537.) The constitutional right to counsel extends to the first appeal of right, and no further. (*Serrano*, at pp. 500-501.) The appeal before us, “although originating in a criminal context, is not a first appeal of right from a criminal prosecution, because it is not an appeal from the judgment of conviction.” (*Id.* at p. 501.) While a criminal defendant has a right to appointed counsel in an appeal from an order after judgment affecting his substantial rights (Pen. Code, §§ 1237, 1240, subd. (a); Gov. Code, § 15421, subd. (c)), that right is statutory, not constitutional. Thus, defendant is not entitled to *Wende* review in such an appeal. (See *Serrano*, at p. 501 [no *Wende* review for denial of postconviction motion to vacate guilty plea pursuant to Penal Code section 1016.5].)

Applying *Serrano* here, defendant has no right to *Anders/Wende* review of the denial of his petition to recall his sentence and for resentencing under Penal Code

section 1170, subdivision (d). Because neither defendant nor his counsel has raised any claim of error in the trial court’s denial of the petition at issue here and because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, we must dismiss defendant’s appeal as abandoned.³

Moreover, even if we did not dismiss this appeal and independently reviewed the record, under *People v. Kelly* (2006) 40 Cal.4th 106 we find no arguable issues. (Pen. Code, § 1170, subdivision (d)(1) [any recall and resentencing under this subdivision must be made within 120 days of sentencing]; *People v. Pritchett* (1993) 20 Cal.App.4th 190, 193 [“[Penal Code] [s]ection 1170 subdivision (d) does not confer standing on a defendant to initiate a motion to recall a sentence.”].)

IV

DISPOSITION

The appeal is dismissed.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.

³ Because we must dismiss the appeal as abandoned, we do not reach the issue of whether the order from which defendant purports to appeal is properly classified as an order after judgment, affecting defendant’s substantial rights. (See Pen. Code, § 1237, subd. (b); Cal. Rules of Court, rule 8.204.)